

Assembly Bill No. 1491

Passed the Assembly April 24, 2000

Chief Clerk of the Assembly

Passed the Senate April 13, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Section 366.3 to the Code of Civil Procedure, and to amend Sections 1811, 1813, 1827, 1863, 11603, 21306, and 21320 of, to add Section 21305 to, to add Part 7 (commencing with Section 21700) to Division 11 of, and to repeal Chapter 2 (commencing with Section 150) of Part 3 of Division 2 of, the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, Kaloogian. Estates and trusts.

Existing law provides that a person wishing to bring a cause of action against a deceased person for liability arising under contract, tort, or otherwise, has one year from the date of death to do so, with certain exceptions.

This bill would provide that a person with a claim arising from an agreement with a decedent, whether oral or written, for distribution from an estate or trust would also have one year within which to commence an action to enforce the claim, with certain exceptions.

Existing law provides that contracts to make or not make a will or a devise, or to die intestate, may be established by only certain types of evidence, including a writing signed by the decedent.

This bill would include within the types of evidence that may be used to prove the existence of this kind of contract clear and convincing evidence of an agreement or a promise between the decedent and the claimant, or between the decedent and another person for the benefit of the claimant, that is enforceable in equity.

Existing law provides a spouse may nominate a conservator for a proposed conservatee. Existing law also provides that the spouse of an absentee, as defined, may not be appointed as a conservator of the estate of the absentee unless the spouse alleges, and the court finds, that the spouse has not commenced an action for dissolution of marriage, or similar action.



This bill would provide that the spouse of any proposed conservatee may not petition for the appointment of a conservator of his or her spouse, nor be appointed as a conservator of the person or the estate for his or her spouse, unless the petitioner alleges, and the court finds, that the spouse is not a party to an action for dissolution of marriage, or similar action. The bill would require the spouse of a conservatee to disclose to the conservator, or, if the spouse is the conservator, to disclose to the court, the filing of any action or proceeding against the conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of marriage, within 10 days of the filing of the action or proceeding by filing a notice with the court and serving the notice, as specified. The bill would provide that the court may, in that case, set the matter for hearing on an order to show cause why the appointment of the spouse as conservator should not be terminated. This bill would also provide for an exception to this prohibition when the court finds by clear and convincing evidence that appointment of the spouse is in the best interests of the proposed conservatee. Additionally this bill would require the court to appoint a counsel to consult with and advise the proposed conservatee and report to the court.

Existing law provides for a jury trial in the matter of the establishment or termination of a conservatorship, if demanded, as specified.

This bill would instead provide for a jury trial in that matter if demanded by the conservatee or proposed conservatee.

Existing law governs the distribution of an estate.

This bill would provide that if the whereabouts of a distributee is unknown, the order for distribution shall provide for alternate distributees and the share to which each is entitled.

Existing law provides that a no contest clause in an instrument is not enforceable against specified types of actions, such as an action on the grounds of forgery, providing the action is based on probable cause.



This bill would provide for additional actions that would not constitute contests unless expressly identified in the no contest clause as violations of it. This bill would also provide a further list of actions that, as a matter of public policy, would be deemed not to violate a no contest clause. This bill would also delete the requirement that certain of these actions be based on probable cause and substitute instead a reasonable cause standard, as defined. The bill would exempt a codicil executed after January 1, 2001, from these provisions, unless the codicil specifically adds or amends a no contest clause contained in the will or other testamentary instrument executed before January 1, 2001.

Existing law provides that a beneficiary may apply to a court for a determination on whether certain motions and petitions will violate a no contest clause without this application violating the clause, and includes a noninclusive list of particular claims to which this law applies.

This bill would expand this list.

The people of the State of California do enact as follows:

SECTION 1. Section 366.3 is added to the Code of Civil Procedure, to read:

366.3. (a) If a person has a claim which arises from a promise or agreement with a decedent to distribution from an estate or trust or under other instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(b) The limitations period provided in this section for commencement of an action shall not be tolled or extended for any reason except as provided in Part 3 (commencing with Section 21300) of Division 11 of the Probate Code.



(c) This section applies to actions brought on claims concerning persons dying on or after the effective date of this section.

SEC. 2. Chapter 2 (commencing with Section 150) of Part 3 of Division 2 of the Probate Code is repealed.

SEC. 3. Section 1811 of the Probate Code is amended to read:

1811. (a) Subject to Section 1813, the spouse or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) Subject to Section 1813, the spouse or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and the nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse or parent.

SEC. 4. Section 1813 of the Probate Code is amended to read:

1813. (a) The spouse of a proposed conservatee may not petition for the appointment of a conservator for a spouse or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the spouse is not a party to any action or proceeding against the proposed conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage. However, if the court finds by clear and convincing evidence that the appointment of the spouse, who is a party to an action or proceeding against the proposed conservatee for legal separation, dissolution, separation, annulment, adjudication of nullity of their marriage, or has obtained a judgment in any of these proceedings, is in the best interests of the proposed conservatee, the court may appoint the spouse.

Prior to making this appointment, the court shall appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings



concerning the suitability of appointing the spouse as conservator.

(b) The spouse of a conservatee shall disclose to the conservator, or if the spouse is the conservator, shall disclose to the court, the filing of any action or proceeding against the conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of marriage, within 10 days of the filing of the action or proceeding by filing a notice with the court and serving the notice according to the notice procedures under this title. The court may, upon receipt of the notice, set the matter for hearing on an order to show cause why the appointment of the spouse as conservator, if the spouse is the conservator, should not be terminated and a new conservator appointed by the court.

SEC. 4.2. Section 1827 of the Probate Code is amended to read:

1827. The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee.

SEC. 4.4. Section 1863 of the Probate Code is amended to read:

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, or the spouse or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.

(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the



settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

SEC. 4.6. Section 11603 of the Probate Code is amended to read:

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

(c) If the whereabouts of a distributee named in the order is unknown, the order shall provide for alternate distributees and the share to which each is entitled. The alternate distributees shall be the persons, to the extent known or reasonably ascertainable, who would be entitled under the decedent's will or under the laws of intestate succession if the distributee named in the order had predeceased the decedent, or in the case of a devise for a charitable purpose, under the doctrine of cy pres. If the distributee named in the order does not claim the share to which the distributee is entitled within five years after the date of the order, the distributee is deemed to have predeceased the decedent for the purpose of this section and the alternate distributees are entitled to the share as provided in the order.

SEC. 5. Section 21305 is added to the Probate Code, to read:

21305. (a) For instruments executed after the effective date of this section, the following actions shall



not constitute a contest unless expressly identified in the no contest clause as a violation of the clause:

(1) The filing of a creditor's claim or prosecution of an action based upon it.

(2) An action or proceeding to determine the character of property.

(3) A challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document, other than the instrument containing the no contest clause.

(4) A petition for settlement or for compromise affecting the terms of the instrument.

(b) Notwithstanding anything to the contrary in any instrument, the following proceedings shall not violate a no contest clause as a matter of public policy:

(1) A petition seeking relief under Chapter 3 (commencing with Section 15400) of Part 2 of Division 9.

(2) A petition under Part 3(commencing with Section 1800) of Division 4.

(3) A petition under Part 2(commencing with Section 4100) of Division 4.5.

(4) A petition seeking an order annulling a marriage of the person who executed the instrument containing the no contest clause.

(5) A petition pursuant to Section 2403.

(6) A petition challenging the exercise of a fiduciary power.

(7) A petition objecting to the appointment of a fiduciary or seeking the removal of a fiduciary.

(8) Objections or other responsive pleading to an accounting of a fiduciary.

(c) Nothing in this section shall apply to a codicil executed after January 1, 2001, unless the codicil specifically adds or amends a no contest clause contained in the will or other testamentary instrument executed before January 1, 2001.

SEC. 6. Section 21306 of the Probate Code is amended to read:



21306. (a) A no contest clause is not enforceable against a beneficiary to the extent the beneficiary, with reasonable cause, brings a contest that is limited to one or more of the following grounds:

(1) Forgery.

(2) Revocation.

(3) An action to establish the invalidity of any transfer described in Section 21350.

(b) “Reasonable cause” is defined for the purposes of this section to mean that the party filing the action, proceeding, contest, or objections has possession of facts that would cause a reasonable person to believe that the allegations and other factual contentions in the matter filed with the court may be proven or, if specifically so identified, are likely to be proven after a reasonable opportunity for further investigation or discovery.

SEC. 7. Section 21320 of the Probate Code is amended to read:

21320. (a) If an instrument containing a no contest clause is or has become irrevocable, a beneficiary may apply to the court for a determination whether a particular motion, petition, or other act by the beneficiary, including, but not limited to, creditor claims under Part 4 (commencing with Section 9000) of Division 7, Part 8 (commencing with Section 19000) of Division 9, and Part 7 (commencing with Section 21700) of Division 11, would be a contest within the terms of the no contest clause.

(b) A no contest clause is not enforceable against a beneficiary to the extent an application under subdivision (a) by the beneficiary is limited to the procedure and purpose described in subdivision (a) and does not require a determination of the merits of the motion, petition, or other act by the beneficiary.

(c) A determination of whether Section 21306 or 21307 would apply in a particular case may not be made under this section.

SEC. 8. Part 7 (commencing with Section 21700) is added to Division 11 of the Probate Code, to read:



PART 7. CONTRACTS REGARDING
TESTAMENTARY OR INTESTATE SUCCESSION

21700. (a) A contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, if made after the effective date of this statute, can be established only by one of the following:

(1) Provisions of a will or other instrument stating the material provisions of the contract.

(2) An expressed reference in a will or other instrument to a contract and extrinsic evidence proving the terms of the contract.

(3) A writing signed by the decedent evidencing the contract.

(4) Clear and convincing evidence of an agreement between the decedent and the claimant or a promise by the decedent to the claimant that is enforceable in equity.

(5) Clear and convincing evidence of an agreement between the decedent and another person for the benefit of the claimant or a promise by the decedent to another person for the benefit of the claimant that is enforceable in equity.

(b) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

(c) A contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, if made prior to the effective date of this section, shall be construed under the law applicable to the contract prior to the effective date of this section.



Approved _____, 2000

Governor

